

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JESSICA ALBORNOZ,

Plaintiff,

v.

WAL-MART ASSOCIATES, INC., et al.,

Defendants.

Case No. 1:22-cv-01229-JLT-CDB

ORDER GRANTING MOTION TO EXCUSE
LATE FILING PURSUANT TO LOCAL
RULE 134(C)

(ECF No. 12)

Currently before the Court is Defendants' motion to excuse a late filing pursuant to Local Rule 134(c). (ECF No. 12.) Defendants indicate that the deadline to file the removal documents was September 26, 2022, however, the removal documents were not filed until the next day, September 27, 2022, due to a proffered technical failure and system outage on the Court's CM/ECF system. Defendants have attached communications with a third party process serving company, as well as communications with Court staff that demonstrate the outage was system-wide, and not due to a technical failure on the part of the Defendants. On the date of the deadline, September 26, 2022, Defendants served email copies of the removal documents on Plaintiff's counsel; filed the removal documents on the docket on September 27, 2022, and on September 28, 2022, served conformed copies on Plaintiff.

Local Rule 134 provides the following guidance in the event of a CM/ECF outage:

(c) Technical Failures. The Clerk shall deem the CM/ECF site to be subject to a technical failure on a given day if the site is unable to accept filings continuously or intermittently over the

1 course of any period of time greater than two hours after 2:00 p.m.
2 on a given day. Known systems outages will be posted on the
3 website, if possible. CDs or other electronic media may be filed
4 during a time of technical failure.

5 **(1) Untimely Filings Due to CM/ECF Failure.** A
6 party may file on the next business day following the technical
7 failure that is announced on the Court's website. If the technical
8 failure is not so announced on the Court's website, then the party
9 must file the document as promptly as possible and seek
10 appropriate relief from the Court.

11 **(2) Service Required Despite Court's Technical**
12 **Failure.** If filing is impossible due to the CM/ECF failure, counsel
13 shall timely serve the document directly on all counsel in the
14 action by email, overnight delivery, or other expeditious means
15 appropriate to the circumstances

16 L.R. 134(c).

17 As of the entry of this order, the CM/ECF outage has not been announced on the Court's
18 public webpage. See [https://www.caed.uscourts.gov/caednew/index.cfm/cmecf-e-filing/cmecf-](https://www.caed.uscourts.gov/caednew/index.cfm/cmecf-e-filing/cmecf-outages/)
19 [outages/](https://www.caed.uscourts.gov/caednew/index.cfm/cmecf-e-filing/cmecf-outages/) (last visited October 6, 2022). Nonetheless, the Court has confirmed with technical
20 support staff that there was indeed a CM/ECF outage on September 26, 2022. In light of this
21 independent confirmation, and the exhibits attached to the Defendants' motion that demonstrate
22 diligence and the Defendants' confirmation of the outage during the relevant time, the Court
23 finds good cause to grant the Defendants' motion for relief pursuant to Local Rule 134(c).¹

24 Accordingly, pursuant to Local Rule 134(c), IT IS HEREBY ORDERED that:

- 25 1. Defendants' motion (ECF No. 12) is GRANTED; and
- 26 2. The Court excuses the late filing of the documents filed on September 27, 2022
27 (ECF Nos. 1-7), and deems them timely filed.

28 IT IS SO ORDERED.

Dated: October 6, 2022


UNITED STATES MAGISTRATE JUDGE

¹ Given the Local Rule and independent confirmation, the Court saw no need to order an opposition, however, Plaintiff may file a request for reconsideration of this order if Plaintiff desires.